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Previous references. (1924 cts) cts **File No.** 226-23

Serial Nos. 1 & 2

Later references.

Previous

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 2

Part B for September 1924.

SUBJECT

Procedure for the apprehension of deserters ~~in Mysore~~ from the British Army by the Mysore Police without a warrant.

To

Hon. I. G. of Prisons No. P/1224 & 6.9.24.

States that the arrest should be made by the Mysore Police only on a warrant issued by a British Magte.

J. Venkatachariar
16/9

G. R. S. 11] 1922-24

GENERAL AND REVENUE SECRETARIAT.

(C5)

NOTES.

File No. 220-5

FILE HEADING:

Procedure for the apprehension of deserters in Mysore

From

The I.G. of Police

C No. 1963 Dated 26.3.24 Received 28.3.24

Diary No. 4234	Enclos. 1	Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

States that the power of a police officer to arrest a deserter from the British army without a warrant from the British magistrate is questioned which is contrary to the provisions of section 54, Criminal Procedure code and requests that the procedure adopted in British India (Madras Police Journal) may be adopted.

NOTES AND ORDERS.

Submitted with a copy of the G.O. 19-11-1919.

P.S. 24.3.24

(2) The G.O. of 19.11.1919 (Flag 7) relates to British military Units and applies only to cases of deserters from the British military Units. Such

NOTES—First Sheet.

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deserters cannot be arrested by the Kashmir Police without a warrant from a British Indian Magistrate, according to the G.O. of 19-11-1919.

2 This interpretation does not seem to be correct for under section 54 Cr. Procedure Code sixthly the Kashmir Police can arrest without warrant only a deserter from the military forces of the Maharaja and not a British military deserter.

(3) The rules referred to by the A.G. for being adopted in Kashmir need not be adopted, for the procedure fixed by the G.O. of 19-11-1919 is merely to surrender the British military deserter to the person producing the warrant from the Army/Embarkation commandant. Please see letter 2 in para 1. of the G.O. of 19-11-1919.

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Dr Reg—

(4) There appears to be some misconception regarding the scope of section 54 Cr. P.C. The Inspector-General of Police raises two questions—one relating to the clear intention and applica-

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other to the adoption of similar instructions in in Mysore as are conveyed in the letter of Government of India dated 20th December 1920 printed at page 14 of Madras Police Gazette.

(5) As regards the scope of G.O. referred to above, it is clear that the Police can only arrest a deserter from British Military Units on a proper warrant being issued from a magistrate having jurisdiction in British India (vide para 2 of the letter from Chief Secretary to the Government of Madras dated 28th May 1919, pp. 4 and 5 of G.O. Flag F).

(6) This arrangement does not run counter to Section 54 Cr. P.C. for the following reasons:--

(7) Firstly, clause 6 of Section 54 applies only to a deserter from the Military Forces of the Maharaja and not to a deserter from the British Army. Hence this clause has no application in the case of a deserter from the British Army.

(8) Secondly Clause 7 has no application to a Deserter from British Army for one of the two conditions as required under this clause is not fulfilled in such a case.

(9) The Sina que non for the operation of Cl.7 are, first, that the person should be concerned in any offence committed outside Mysore, which if committed in Mysore, would have been punishable as an offence; and secondly that the person must be liable to be apprehended in Mysore for such an act under any law relating to extradition or otherwise.

NOTE--Contn. sheet.

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Considering for the purpose of argument, ~~Considering~~ that he may perhaps be punished in Mysore for an act of desertion(this is also doubtful) he cannot be apprehended or kept in custody under any law relating to extradition.

(10) Neither the Indian Extradition Act, 1903, nor similar enactment Fugitive Offenders Act 1881, is in force in Mysore. By an arrangement made long before the rendition, the arrest and return of the offenders escaping from British India into Mysore are ~~are~~ secured by ~~exempting~~ executing all criminal processes of whatever description issued by any magistrate having jurisdiction in any District in British India, in Mysore as if they had been issued by any magistrate having jurisdiction in Mysore (See Manual of Procedure relating to extradition 2nd Edition pp.19).

(11) Hence Section 54 has no application to the case of a deserter from British Army. When this Section has no application it follows that no provision can be made in our G.O. as is suggested by the Inspector General of Police. There is another reason why such a provision cannot be conveniently made even if Section 54 applies.

(12) There is no court of summary jurisdiction established in Mysore as is contemplated under Section 154(1) of the Army Act. Hence no arrest of a person can be made without a ~~xxxxx~~ warrant and produced forthwith before such a court.

(13) For these reasons the Inspector-General of Police may perhaps ~~accordingly~~ be informed that no provision can be made in G.O. is clear on the point raised by him

NOTE—Contn. sheet.

582/26.9.23 Member.

Sd/ 28/9/23

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WD 2310—GPE—10,000—31-5-24

General and Revenue Secretariat | CS File No. 226 of 1924

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Copy of the Madras Chief Secy's letter dt 28/5/19 to the Genl Officer Commanding 4th Div. Poona regarding steps which are contemplated in the precincts of Govt dt 19th Nov 19 make it quite clear that arrests & deserters from British Territory should be made by the Police only on a warrant from a British Magistrate.

These instructions are quite clear and I do not consider that any reference is necessary.

A copy may be sent to the Govt accordingly 29/8

28/8

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Sd with draft

B. Wl

30/8/24 Ch Secy 25/9

78 Hon'ble Member

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NOTE—Contn. sheet.

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WD 2310—GPE—10,000—31-5-24

General and Revenue Secretariat

Cb File No. 22-6 of 1923-24

Serial No.

2 To the G. R. of Mysore

No P. 1224 dt 6.9.24.

With reference to Sl. 1. re the arrest of deserters from the British army by the Mysore Police without a warrant points out that the preamble of G.O. no G. 11267-77/Mily 100-196-6 dt 19.11.19 make it quite clear that the arrest should be made by the Mysore Police only on a warrant issued by a British magistrate and State that Govt consider that no modification is required.

9/9

NOTE—Conton. sheet.

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No. C 963/13 & 1 Gazette

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,
Dated, Bangalore, the 24th March *19* 24

FROM

P. F. BOWRING, ESQ., J.P.,
INSPECTOR-GENERAL OF POLICE IN MYSORE,
BANGALORE CITY.

TO

B. Nagappa, Esq., Bar-at-Law,
Secretary to the Government of Mysore,
Local & Legis. Departments.

SIR,

Adverting to G.O.No.G.11267-77/Mily.10-18-6 dated 19th November 1919 regarding the apprehension of deserters, I have the honor to state that the order is interpreted in some quarters as restricting the inherent powers of a Police Officer to arrest a deserter from the British Army without a preliminary warrant of arrest from a Magistrate in British India. Should this interpretation be correct, it would be going counter to the provisions of Section 54 of the Criminal Procedure Code. However, it appears to me that this point has to be made clear.

2. In this connection I forward herewith for the information of Government a copy of the Madras Police Gazette dated 20-1-1923 containing on page 14 the procedure to be followed by the Civil Police arresting deserters from the British Army. I request that similar provisions may be incorporated into the order of 1919 defining clearly the powers of the Police in apprehending the deserters and the powers of the Magistrates in ordering their detention till the arrival of the escort from the Military authorities concerned.

I have the honor to be,
Sir,
Your most obedient servant

Inspector General of Police.

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G. R. S. VI—G/32]

SUBJECT.....

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*Diary No. of letter replied to*_____

General and Revenue Secretariat

( )

, the *191* .

Date of issue 6/9/24

Signed by M. U. 75

Section CB

File No. 226-23

Serial No. 2

No. P 1224 (1)

To

The D.G. Police

Sir,

With reference to your letter no: C 1963/23 dt 26.3.1924 re the arrest of debtors from the British army without a warrant by the State police, I am directed to state that the Madras Govt. letter of Secretary's letter dt 28.5.1919 to the General Officer Commanding 9th (Secunderabad) Div: and the letters replying thereto which have been embodied

over.

[illegible]

[illegible] it quite clear that [illegible]
deserters from the B Tn [illegible]
units should be made to
understand that they are liable only on a warrant issued by
~~him~~ a Brother magistrate and that
Govt do not consider that they
require any modification.
Receipt of Madras Police papers received with
your letter is now acknowledged. Name, etc

[illegible]
[illegible]
H. Lindsay

30/8/24

List of enclosures.

Copied by

Examined by

Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE DEPARTMENTS.

G. O. No. G. 11267-77—Mily. 100-18-6, dated 19th November 1919.

Apprehension of Deserters.

Procedure to be adopted for the —— from British Military Units escaping into the Mysore territory.

W D 1250—GPB—18-12-19—310

Apprehension of Deserters.

No. G. 11267-77—Mily. 100-18-6, dated 19th November 1919.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

GENERAL AND REVENUE DEPARTMENTS

Read—

Letter No. Pol. 733, dated 30th January 1919, from the Chief Secretary to Government, to the First Assistant Resident.

I am directed to state that the Inspector-General of Police, Mysore, has represented that the number of requisitions for the apprehension of deserters from the British Military Units escaping to Mysore territory and for their despatch to Military Depots under the escort of the Mysore Police has of late increased. The escorting by the Mysore Police of the deserters to Military Stations beyond the frontier is not only very inconvenient but does not appear to be in conformity with law.

2. The existing orders about the surrender of accused persons vide your office letters Nos. 3386—219-1900, dated 14th July 1900, 6438, dated 30th December 1901, 4364, dated 5th August 1902, and 794, dated 9th February 1905, relate only to cases in which warrants have been issued by the British or Mysore Magistrates and do not refer to requisitions by the Military Authorities for the surrender of deserters or to their escort or to the payment of cost incurred in this connection.

3. The Government of His Highness the Maharaja of Mysore would be obliged if you will kindly address the authorities concerned on the subject in order that an arrangement may be arrived at for the easy surrender or handing over of such deserters similar to the one now in force for the surrender of accused persons on warrants issued by Magistrates.

Letter No. 7501, dated 30th September 1919, from the First Assistant Resident, to the Chief Secretary to Government.

With reference to your letter No. Pol. 733, dated the 30th January 1919, regarding the apprehension of deserters from British Military Units, I am directed to forward, for the information of the Durbar, a copy of a letter No. 460 A, dated the 12th August 1919, with enclosures, from the Government of Madras, from which it will be seen that the General Officer Commanding 9th (Secunderabad) Division, has agreed to the adoption in the case of these deserters, of the arrangements now in force for the apprehension of accused persons on warrants issued by Magistrates. I am to add that the Government of Bombay are prepared to adopt the same procedure.

Letter No. 460 A, dated the 12th August 1919, from the Acting Chief Secretary to the Government of Madras, Public Department, to the Hon'ble the Resident in Mysore.

With reference to the correspondence ending with my letter No. 1826-3—Public, dated the 2nd June 1919, regarding the apprehension of Military deserters, I am directed to inform you that the General Officer Commanding 9th (Secunderabad) Division has agreed to the adoption in the case of these deserters, of the arrangements now in force for the apprehension of accused persons on warrants issued by Magistrates. A copy of the letter No. 1826-2—Public, dated 28th May 1919, addressed to the General Officer Commanding 9th (Secunderabad) Division, with a copy of his reply, is herein enclosed for your information and for communication to the Mysore Durbar.

Letter from the Chief Secretary to the Government of Madras, to the General Officer Commanding 9th (Secunderabad) Division, No. 1826-2, dated the 28th May 1919.

I am directed to enclose a copy of a letter No. Pol. 733, dated the 30th January 1919, from the Chief Secretary to the Government of His Highness the Maharaja of Mysore, to the First Assistant to the Hon'ble the Resident in Mysore and to state that, under the arrangements in force for obtaining the arrest and return of offenders escaping from British India into Mysore, a requisite preliminary is the issue of criminal processes by a Magistrate having jurisdiction in British India. These processes are then acted upon and executed by Magistrates and Police Officers in Mysore under the same conditions and in the same manner as if they had been issued by a Magistrate having jurisdiction in Mysore. The expenses incurred in connection with the subsistence and transit of accused persons are adjusted in accordance with the arrangement described in Government Order No. 1859—Judicial, dated the 13th December 1904, copy of which is enclosed for reference.

2. It will be seen that, under the arrangements described above, there is no legal provision under which the Mysore Authorities could comply with requisitions made directly by the Military Authorities in British India for the surrender of deserters from the Army.

No. G. 11267-77—MILY. 100-18-6, DATED 19TH NOVEMBER 1919.

The proper procedure for the Military authorities would seem to be to prefer the charge of desertion, if any, to a Magistrate having jurisdiction in British India and move him to issue a criminal process on which the Mysore Authorities could act. The expenses, if any, incurred in connection with the subsistence and transit of deserters, could be adjusted in accordance with Government Order No. 1859—Judicial, dated the 13th December 1904, the expenses incurred by the Government of Madras being subsequently recovered from Army Funds.

3. I am directed to enquire whether you have any objections to the adoption of such a course in future.

Letter from the General Officer Commanding 9th (Secunderabad) Division, to the Chief Secretary to the Government of Madras, No. 05418—5 A, dated 17th July 1919.—

With reference to your Public Department No. 1826—2, dated 28th May 1919, I have the honour to inform you that there is no objection to the adoption of the course of action outlined.

It appears to be convenient and workable.

Order No. G. 11267-77—Mily. 100-18-6, dated 19th November 1919.

The foregoing communications in regard to the apprehension of deserters from British Military Units are forwarded to the Chief Commandant, Mysore State Troops, the Inspector-General of Police in Mysore and District Magistrates of Districts for information and guidance.

C. S. BALASUNDARAM IYER,
Chief Secy. to Govt.

To—The District Magistrates of Districts.
The Inspector-General of Police in Mysore, with reference to his letter No. 1052-70, dated 12th August 1918.
The Registrar, Chief Court of Mysore, Bangalore.
The Chief Commandant, Mysore State Troops.